

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CASE NO. 3:01-CR-00185-FDW

UNITED STATES OF AMERICA )  
 )  
 v. ) **ORDER**  
LINWOOD GERALD KENNY, )  
 )  
Defendant. )  
 )

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**THIS MATTER** is before the Court on Defendant's Motion for Compassionate Release, (Doc. No. 287); Defendant's Motions for Extension of Time to File Response to Government's Opposition. (Doc. Nos. 310, 311); Defendant's Motion to Withdraw his Motion for Compassionate Release, (Doc. No. 312); and Defendant's Motion to Appoint Counsel, (Doc. No. 316).

As an initial matter, the Court GRANTS Defendant's Motion to Withdraw his Motion for Compassionate Release, which also MOOTS the pending Motions for Extension of Time.

Defendant has filed a "Motion for Sentence Reduction Pursuant to the First Step Act of 2018 § 404 (b)," (Doc. No. 315), and moved for this Court to appoint counsel to represent him to further brief his claim and respond to any response by the Government. (Doc. No. 316). The Court finds that Defendant is eligible for appointment of counsel as that is defined in this Court's administrative order. In Re: Appointment of Counsel for Motions for a Sentence Reduction Pursuant to the First Step Act, 3:21-mc-228 (W.D.N.C. Dec. 16, 2021). Accordingly, the Court GRANTS this motion.

Pursuant to certain provisions of the Criminal Justice Act, Title 18, United States Code Sections 3006A(a)(1) and (c), the Court hereby appoints counsel from the Office of the Federal

Public Defender for the Western District of North Carolina for the purpose of assisting Defendant with his Motion to Reduce Sentence pursuant to Section 404(b) of the First Step Act. Within twenty-one (21) days of appointment, appointed counsel must file an Amended Motion for Reduction of Sentence incorporating all applicable arguments in support of the relief requested by Defendant. The Government shall file a response within twenty-one (21) days of service of the Amended Motion.

In addition, the Court DIRECTS the United States Probation Office to prepare a supplemental presentence report recalculating the range advised by the Sentencing Guidelines, if necessary, to supplement the prior recalculations in previously filed Supplemental PSRs. The parties shall follow the procedures in Federal Rule of Criminal Procedure 32(f) in making any objections to the supplemental report. After the probation office submits the supplemental presentence report and an addendum containing any unresolved objections, the grounds for those objections, and the probation officer's comments on them, the parties shall have fourteen (14) days to file a brief to supplement their arguments on Defendant's pending Motions to Reduce Sentence Pursuant to the First Step Act of 2018.

**IT IS, THEREFORE, ORDERED** that Defendant's Motion to Withdraw, (Doc. No. 312), is GRANTED, and Defendant's Motion for Compassionate Release, (Doc. No. 287), is WITHDRAWN without prejudice. Accordingly, Defendant's Motions for Extensions of Time, (Doc. Nos. 310, 311), are DENIED AS MOOT.

**IT IS FURTHER ORDERED** that Defendant's Motion to Appoint Counsel, (Doc. No. 316), is GRANTED. The Office of the Federal Public Defender for the Western District of North Carolina is appointed as counsel for the purpose of assisting Defendant with his Motion to Reduce Sentence pursuant to Section 404(b) of the First Step Act.

**IT IS FURTHER ORDERED** that the parties shall file amended pleadings and responses thereto as ordered herein.

The Clerk's Office is respectfully directed to serve a copy of this Order on Defendant at his address of record, the United States Probation Office, the United States Attorney's Office, and the Office of the Federal Public Defender.

**IT IS SO ORDERED.**

Signed: April 24, 2023



Frank D. Whitney  
United States District Judge

